

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 Adv. Case No. 19-08289-rrd

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6 In the Matter of:

7  
8 PURDUE PHARMA, L.P.,

9  
10 Debtor.

11 - - - - - x

12 PURDUE PHARMA, L.P., et al,

13 Plaintiff,

14 v.

15 COMMONWEALTH OF MASSACHUSETTS, et al,

16 Defendants.

17 - - - - - x

18  
19 United States Bankruptcy Court

20 300 Quarropas Street, Room 248

21 White Plains, NY 10601

22  
23 February 17, 2022

24 10:12 a.m.

1 B E F O R E :

2 HON ROBERT D. DRAIN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: UNKNOWN

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1 Notice of Agenda / Amended Agenda for February 17, 2022  
2 Hearing (ECF #4364)

3  
4 Notice of Hearing Regarding Late Claim Motion (related  
5 document(s)4231, 4230) filed by Eli J. Vonnegut on  
6 behalf of Purdue Pharma L.P. with hearing to be held on  
7 2/17/2022 at 10:00 AM at Videoconference (ZoomGov)  
8 (RDD) Objections due by 2/10/2022 (ECF #4232)

9  
10 HEARING re: Motion to File Proof of Claim After Claims Bar  
11 Date filed by Eddie Ray Hall with hearing to be held on  
12 2/17/2022 at 10:00 AM at Videoconference (ZoomGov) (RDD).  
13 (ECF #4230)

14  
15 Letter received on 1/21/2022; re: Claim (related  
16 document(s)4230) Filed by Eddie Ray Hall. with hearing to be  
17 held on 2/17/2022 at 10:00 AM at Videoconference (ZoomGov)  
18 (RDD) (ECF #4310)

19  
20 HEARING re: Motion to Extend Time /Motion for Extension  
21 Debtors of Bar Date and Clarity, re: claim 628425 filed by  
22 Larry Dale Evjene with hearing to be held on 2/17/2022 at  
23 10:00 AM at Videoconference (ZoomGov) (RDD). (ECF  
24 #4231)

25

Related Document:

Amended Motion to File Proof of Claim After Claims Bar Date  
(related Document 4231)(ECF #4295)

HEARING re: Notice of Hearing Regarding Late Claim Motion  
[David Mullen] (related document(s)4262) filed by James I.  
McClammy on behalf of Purdue Pharma L.P. with hearing to be  
held on 2/17/2022 at 10:00 AM at Videoconference (ZoomGov)  
(RDD) Objections due by 2/10/2022 (ECF #4272)

HEARING re: Motion to File Proof of Claim after Claims Bar  
Date filed by David Mullen with hearing to be held on  
2/17/2022 at 10:00 AM at Videoconference (ZoomGov)(RDD)(ECF  
#4262)

Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al  
v. Commonwealth of Massachusetts et al

HEARING re: Motion to Extend Time / Motion to Extend the  
Preliminary Injunction filed by Benjamin S. Kaminetzky on  
behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue  
Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma  
of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue  
Pharmaceuticals L.P., Purdue Transdermal Technologies L.P.,  
Rhodes Pharmaceuticals L.P., Rhodes Technologies with  
hearing to be held on 2/17/2022 at 10:00 AM at

1 Videoconference (ZoomGov) (RDD) Responses due by 2/10/2022  
2 (ECF #324)

3  
4 Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al  
5 v. Commonwealth of Massachusetts et al

6 HEARING re: Memorandum of Law in Support of Motion to Extend  
7 the Preliminary Injunction (related document(s)324) filed by  
8 Benjamin S. Kaminetzky on behalf of Avrio Health L.P.,  
9 Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma  
10 Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue  
11 Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P.,  
12 Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals  
13 L.P., Rhodes Technologies. Objections due by 2/10/2022,  
14 Reply due by 2/15/2022 (ECF #325)

15  
16 Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al  
17 v. Commonwealth of Massachusetts et al

18 HEARING re: Statement /Plaintiffs' Executive Committee's  
19 Statement in Response to Debtors' Motion to Extend the  
20 Preliminary Injunction (related document(s)324) filed by  
21 David Molton on behalf of Plaintiffs' Executive Committee.  
22 (ECF #329)

1 Notice of Hearing Regarding Challenge Letter filed by Donald  
2 Creadore on behalf of Ad Hoc Committee of NAS Babies. (ECF  
3 #4335)

4

5 Letter in Support of Document Designation Filed by Cyrus  
6 Mehri on behalf of Public School Districts. (ECF #4362)

7

8 Letter /The Official Committee of Unsecured Creditors'  
9 Letter Regarding 2.17.22 Hearing on NAS AHC Confidentiality  
10 Challenge Filed by Ira S. Dizengoff on behalf of The  
11 Official Committee of Unsecured Creditors of Purdue Pharma  
12 L.P., et al. (ECF #4363)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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8 BY: JACQUELYN KNUDSON (TELEPHONICALLY)

9 MARSHALL SCOTT HUEBNER (TELEPHONICALLY)

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16

17 BY: DONALD E. CREADORE (TELEPHONICALLY)

18

19 ALSO PRESENT TELEPHONICALLY:

20 RONALD BASS, PRO SE

21 VITALY PINKUSOV, PRO SE

22 ROBERT BONSIGNORE

23 BERNARD ARDAVAN ESKANDARI

24 MATTHEW J. GOLD

25 IRVE GOLDMAN

1 EVAN M. JONES  
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3 EDWARD E. NEIGER  
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5 STEVEN POHL  
6 PAUL KENAN SCHWARTZBERG  
7 J. CHRISTOPHER SHORE  
8 ALICE TSIER  
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11 RICHARD ARCHER  
12 MICHAEL ATKINSON  
13 JASMINE BALL  
14 BROOKS BARKER  
15 KATHRYN BENEDICT  
16 DAVID E. BLABEY  
17 SARA BRAUNER  
18 JULIUS CHEN  
19 DANIEL CONNOLLY  
20 DYLAN CONSLA  
21 KEVIN DAVIS  
22 MARIA ECKE, PRO SE  
23 KENNETH H. ECKSTEIN  
24 GILLIAN FEINER  
25 LAWRENCE FOGELMAN



1 CAROLINE GANGE  
2 JERRY B. GERMANY  
3 MAGALI GIDDENS  
4 EDDIE RAY HALL  
5 MITCHELL HURLEY  
6 ELLEN ISAACS, PRO SE  
7 HAROLD D. ISRAEL  
8 GREGORY JOSEPH  
9 BENJAMIN S. KAMINETZKY  
10 MARC KESSELMAN  
11 DARREN S. KLEIN  
12 ANN LANGLEY  
13 ALEXANDER LEES  
14 MARA LEVENTHAL  
15 JEFFREY A. LIESEMER  
16 EDAN LISOVICZ  
17 KEVIN C. MACLAY  
18 BRIAN S. MASUMOTO  
19 GERARD MCCARTHY  
20 SHANNON M. MCNULTY  
21 CYRUS MEHRI  
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23 MAURA KATHLEEN MONAGHAN  
24 AISLING MURRAY  
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1     PHYLLIS POLLOCK  
2     KATHERINE PORTER  
3     ARIK PREIS  
4     RACHAEL RINGER  
5     CHRISTOPHER ROBERTSON  
6     JEFFREY J. ROSEN  
7     JEREMY W RYAN  
8     ELIZABETH SCHLECKER  
9     LUCAS H. SELF  
10    MARC F. SKAPOF  
11    LAURA SMITH  
12    JOSEPH SORKIN  
13    ETHAN STERN  
14    ERIC STODOLOA  
15    JEROME TAPLEY  
16    MARK A. TATE  
17    KEVIN WAYNE THOMPSON  
18    MARC JOSEPH TOBAK  
19    ESTHER TOWNES  
20    GERARD UZZI  
21    MELISSA L. VAN ECK  
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P R O C E E D I N G S

THE COURT: Okay, good morning. This is Judge

Drain. We're here in re: Purdue Pharma L.P. et al. This

hearing is being held remotely, primarily by Zoom unless

someone doesn't have access to a screen, in which case they

are appearing by telephone. I have the amended Agenda for

this morning's Omnibus Hearing. It was amended, I think,

just to reflect the filing of two documents overnight -- let

me make sure -- with respect to the last matter on the

Agenda. And I'll go down the Agenda, in order this morning.

So, there are two uncontested matters that are

first up for this morning but let me call them even though

they are uncontested. The first one is a Motion by Eddie

Ray Hall to have his claim filed after the Claims Bar Date.

There are similar motions that are also listed as

uncontested by Larry Dale Evjene and David Mullen. So, I

had an email from the Department of Corrections in

1 Washington State that Mr. Hall and Mr. Evjene would not be  
18

2 able to appear because of COVID lockdown restrictions, but

3 19  
4 let me just ask, is Mr. Hall present? Okay, is anyone  
20

5  
6 handling this for the Debtors?

6 21

7 MS. KNUDSON: Yes, Your Honor. Good morning. For  
22

8 the record, Jacquelyn Knudson of Davis Polk and Wardwell on

9 23  
10 Behalf of the Debtors. Can I be heard clearly?

24

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THE COURT: Yes.

12 25

13 Page 13

14 1 MS. KNUDSON: Thank you, Your Honor. I'll be  
15 2 handling the first three Agenda items, which, as you noted  
16 3 are the uncontested Late Claim Motions and I plan to just  
17 4 address those together very briefly. We have careful  
18 5 reviewed the Motions and based on the individualized  
19 6 assertions in the Motions, the Debtors believe there is a  
20 7 colorable basis for granting the requested extensions under  
21 8 the Pioneer factors. Each Movant is incarcerated and has  
22 9 alleged in the Motion that COVID-19 restrictions at the  
23 10 facilities and our postal service delays contributed to the  
24 11 untimely filing. As we've done in the past, we consulted  
25 12 with the Creditors' Committee and the Ad Hoc Group of  
13 Individual Victims regarding the assertions in the Motions

1 14 and both have consented to the relief requested.

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3 15 Accordingly, the Debtors requested that the

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5 16 proposed Orders submitted at Docket No. 4343, which is

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7 17 consistent with prior Orders we've submitted for Late Claim

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9 18 Motions be entered. I'm happy to answer any questions Your

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11 19 Honor may have.

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13 20 THE COURT: Okay. Let me just confirm that no-one

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15 21 else has anything to say on either -- on any of these three

16

17 22 Motions, the Motion by Mr. Hall and Mr. Evjene or Mr.

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19 23 Mullen. Okay, I have reviewed each of the Motions and I

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21 24 agree that there's a basis, as stated by the Debtor's

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23 25 counsel without any opposition by the Committee or the P.I.

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1 group or any others to grant the Motions to permit the  
2 claims to be filed late given the averments in the Motions  
3 that each of these men had limited access to either the  
4 media or Bar Date dates because of restrictions imposed on  
5 them while incarcerated.

6 My one issue here is for Mr. Hall. It's not clear  
7 to me that he's actually filed a claim. Could you double  
8 check to see whether he has, in fact, filed a claim? If he  
9 has, it's fine, that standard Order works. If he hasn't, I  
10 think you need to set a date for him to file a claim.

11 MS. KNUDSON: Sure. Yes, sir. And I can confirm  
12 that he has filed a claim that was received by the Clerk.  
13 Yes, Your Honor.

14 THE COURT: All right, fine. So, makes it easier.  
15 Then you can submit the standard Order granting the Motion  
16 on an opposed basis for each of the three Motions.

17 MS. KNUDSON: Thank you, Your Honor. We will do  
18 that. I will now turn the podium over to my colleague, Mr.  
19 Huebner, for the next Agenda item.

20 THE COURT: Okay, very well.

21 MR. HUEBNER: Good morning, Your Honor. For the  
22 record, Marshall Scott Huebner with Davis Polk. I hope that  
23 the Court and all parties are well. The next item upon the  
24 Agenda, Your Honor, is our request for a two-week extension  
25 of the injunction in its current form. It currently is due

1 to expire today, and we are asking for an extension until  
2 March 2nd. As the Court knows, the most recent interim  
3 Mediator's Report outspeaks of substantial progress in the  
4 mediation for material enhancements in the transaction that  
5 was originally embodied or most recently embodied formerly  
6 in the Plan for Organization that is currently up on the  
7 (indiscernible). The mediation, Your Honor, pursuant to the  
8 most recent Order that this Court entered, was due to expire  
9 yesterday at 5 p.m.

10 The mediator authorized me, this morning, to  
11 advise the Court and the parties, as follows, that a  
12 Mediator's Reporter is likely to be filed tomorrow. It  
13 could be tonight, but more likely tomorrow. That she will  
14 communicate in that report, her recommendations for a path  
15 forward, including potentially additional or a continuation  
16 of mediation. And so there will be a report coming.  
17 Obviously, with last night, obviously having happened quite  
18 recently and a lot going on, the report will hit the docket,  
19 I think, certainly no later than tomorrow.

20 But again, Your Honor, for today's purposes, it's  
21 actually very straightforward. Today's Motion is  
22 uncontested. It has the support of various parties and the  
23 lack of objection of other parties. There was one statement  
24 filed on the docket, which is not an objection, which I'm  
25 not going to address unless necessary. I think the fact



1 that we have 13 mutual organized creditor groups in the  
2 case, not one of which has objected and we have all of the  
3 mediation parties, not one of whom has objected, speaks  
4 volumes in the fact that right now, allowing the parties to  
5 focus exclusively on this mediation, whereas per the last  
6 report, very substantial progress was made on very material  
7 enhancements to the transaction for the benefit of all  
8 Creditors is the first, second, third and fourth priority.  
9 There are, of course, other things going on in the  
10 background as, you know, moving forward with the appeal,  
11 it's really one of the more important things we are doing to  
12 be sure. But in no circumstance is it the only thing that  
13 is going on, and many conversations are happening among many  
14 parties on a variety of topics. Of that, I think the Court  
15 and all parties can be quite sure.

16 So, I don't really feel the need, Your Honor,  
17 unless there are questions or comments from the Court, to  
18 say any more. It is a two-week, essentially, puddle-jumper  
19 and it is uncontested and supported by the key parties. And  
20 I would just leave it at that for the sake of having this  
21 hearing be as brief and efficient as possible.

22 THE COURT: Okay. I think you misspoke about one  
23 thing, Mr. Huebner. You said that the Motion seeks an  
24 extension of the Preliminary Injunction through March 2nd.  
25 I read it as seeking it through March 3rd.

1 MR. HUEBNER: Oh, Your Honor. I'm sorry, I  
2 misspoke. It is, of course, March 3rd and I apologize for  
3 that.

4 THE COURT: Okay. All right. The -- I see two  
5 people on the screen. The first is Ronald Bass. He  
6 actually filed a document on -- or provided it to the Court  
7 on February 9th and then amended it the next day, February  
8 10th and I'll focus on that matter. The document originally  
9 provided to the Court contained a number of exhibits that  
10 had personally identifying information and other information  
11 that our Clerk's office was concerned shouldn't be filed on  
12 the docket and informed Mr. Bass of that and I believe he  
13 revised it in light of that. The September 10th -- I'm  
14 sorry, February 10th document is titled, Amended Letter  
15 Motion Opposing the Injunction to Stay for Third Parties  
16 Non-Debtors Release. I've reviewed this document and I'll  
17 note that Mr. Bass is appearing pro se. And I'm going to  
18 ask you, Mr. Bass, if you can just tell me what it is that  
19 you are seeking here? Because I think I understand it, but  
20 it's not entirely clear to me, but I'd like to give you the  
21 chance to explain it to me. You're on mute, sir. You're on  
22 mute, Mr. Bass.

23 MR. BASS: Can you hear me now?

24 THE COURT: Yeah, now I can, yes.

25 MR. BASS: Okay. My concern is that -- are -- is

1       exempted for what Objector is requesting does it cover the  
2       State of New Jersey? I need to know the many actions or  
3       claims that I am filing against the State of New Jersey  
4       that's similar to the situation with the Purdue Pharma.

5               THE COURT: No. The answer is no.

6               MR. BASS: And that covers (indiscernible) I  
7       mentioned in my Motion and paperwork.

8               THE COURT: As I understood it from reviewing the  
9       document that you filed, you have raised arguments in other  
10      courts.

11              MR. BASS: You're right.

12              THE COURT: Like, in the multi-district litigation  
13      in Ohio, in New Jersey itself --

14              MR. BASS: Right.

15              THE COURT: That you were wronged by either the  
16      State of New Jersey or courts or officials in New Jersey.

17              MR. BASS: Right.

18              THE COURT: The Preliminary Injunction does not  
19      include as a party covered by the Injunction or protected by  
20      the Injunction, the State of New Jersey.

21              MR. BASS: Okay, that's the answer that I was  
22      looking for.

23              THE COURT: Okay. All right. I thought that was  
24      it. I just wanted to make sure and --

25              MR. BASS: Right.

1 THE COURT: -- again, I don't think there's any  
2 Order that needs to say that it just -- you know, the actual  
3 Injunction doesn't cover it. And I want to be clear, and I  
4 think you understand this, by saying that I'm not saying  
5 anything about the merits of your claims or anyone's  
6 defenses. I'm just saying that this Injunction doesn't  
7 preclude you from pursuing them against the State of New  
8 Jersey or officials in New Jersey.

9 MR. BASS: Okay. Well, that's what I'm trying to  
10 get an understanding of.

11 THE COURT: Okay.

12 MR. BASS: Yeah. That's the thing that was  
13 bothering me.

14 THE COURT: Okay. Very well.

15 MR. BASS: All right. Thank you.

16 THE COURT: Okay. And then I see Mr. Pinkusov  
17 also on the screen. He sent, I believe, an email to court  
18 yesterday stating that he generally opposed -- well, why  
19 don't I let you say it, Mr. Pinkusov. There's no reason for  
20 me to summarize it.

21 MR. PINKUSOV: Good morning, Your Honor. I'm here  
22 purely to see the proceedings and everything that I was  
23 going to say is said in my letter and I stand by that.

24 THE COURT: Okay, that's fine. Very well. All  
25 right. Does anyone have anything further to say on the

1 Motion to Extend the Preliminary Injunction through March  
2 3rd?

3 MR. BASS: Yes, one more thing. Yes, Judge, one  
4 more thing. How can I get a copy of that second  
5 (indiscernible) conversation that you had with me?

6 THE COURT: I'm sorry? That section of what?

7 MR. BASS: From the conversation that you had with  
8 me about my Motion.

9 THE COURT: There'll be a transcript of this  
10 hearing that will eventually be filed on the docket. It's  
11 probably not going to be that long before it's filed since  
12 it's a fairly short hearing. So, you should just check the  
13 docket for it.

14 MR. BASS: Oh, okay then. Thanks again.

15 MR. HUEBNER: And Your Honor, we're happy, as a  
16 courtesy, to excerpt the relevant provisions of the  
17 transcript (indiscernible) to Mr. Bass when they do become  
18 available, which may make it easier for him to get it more  
19 quickly. So, once it's public and we have it, we will  
20 certainly excerpt it and send it on.

21 THE COURT: Okay.

22 MR. BASS: Thank you. You'll send it  
23 (indiscernible)?

24 MR. HUEBNER: Yeah, we'll excerpt the section for  
25 you, sir, and send them to you in an email, along with a

1 copy of the full transcript since you have the Judge's  
2 quotes in the email. But not that it matters because the  
3 Judge has spoken, but the Debtors certainly share the view  
4 that the Injunction that we requested does not cover your  
5 suits against New Jersey officials and your federal district  
6 court. So, we'll send you that as a courtesy.

7 Your Honor, I don't think there's anything further  
8 on the Injunction, and then I think that brings us to our  
9 last and final --

10 THE COURT: I have to give you my ruling, Mr.  
11 Huebner.

12 MR. HUEBNER: Oh, apologies, Your Honor.

13 THE COURT: I had a Motion that was filed earlier  
14 this month for an extension of the Preliminary Injunction  
15 that's been in effect in these cases for some time now.  
16 There is a lengthy bench ruling and lengthy District Court  
17 opinion laying out the standards and caselaw for such an  
18 injunction. I'm not going to repeat that here in light of  
19 the fact that the Motion is unopposed. I believe that, as  
20 far as the facts are concerned, the factual records, such as  
21 it is, supports the entry of an Order further extending the  
22 Injunction through March 3, 2022. The purpose of the last  
23 two Orders Extending the Preliminary Injunction have been to  
24 permit the mediation between the so-called, Sackler parties,  
25 and the so-called nine Appellants comprising eight states

1 and the District of Columbia, who successfully appealed the  
2 Confirmation Order and who are now the Appellees in an  
3 appeal by the Debtors joined in by various parties on these  
4 cases at the Second Circuit.

5 Those Appellants or those nine governmental  
6 entities expressed, following the entry of the District  
7 Court's decision and Order, an interest in mediating their  
8 disputes with the Sacklers, and accordingly, I appointed my  
9 colleague, Judge Chapman as mediator, to conduct such a  
10 mediation. The Sacklers also being willing to do so. I  
11 have had two reports by Judge Chapman, each of which  
12 reflected her belief, which I have no reason to doubt that  
13 she has come very close to a resolution in that mediation  
14 that would materially increase the amounts that would be  
15 paid by the Sacklers in settlement of claims against them by  
16 the Debtors and third parties and other non-monetary  
17 consideration, as well.

18 It's clear to me that there's been no announcement  
19 of a conclusion of the mediation, either one that was  
20 stating that the mediation is successful or one that it was  
21 partially successful or one that it was not successful. On  
22 the other hand, it appears also clear to me that, as far as  
23 a successful reorganization of these Debtors is concerned,  
24 the key parties in interest in the case who are closest to  
25 the mediation, and I will note in that regard that Judge

1 Chapman obtained clarification that she could add additional  
2 parties as part of the Mediation Order and enable them to  
3 communication with each other. So, those parties, I believe  
4 are also informed of the status of the mediation. The key  
5 parties in interest in the case believe that, in any event,  
6 extending the injunction through March 3rd will (a) enable  
7 the mediation to succeed with a reasonable prospect of  
8 success, (b) if it does succeed, enable the parties to  
9 consider further steps to take in the case and (c) that if  
10 it doesn't succeed, to formulate a position as to the next  
11 steps in this case, including whether the Injunction should  
12 remain in effect. This case is too significant to too many  
13 people and government entities and other parties in interest  
14 to be taking knee jerk actions in light of a process that is  
15 still unfolding, as Judge Chapman has previously related to  
16 the Court, a material prospect of success. So, I conclude  
17 that that limited extra time, i.e. through March 3rd, is  
18 warranted here under the caselaw that I previously cited.  
19 So, I will enter the Order that was proposed, which follows  
20 the format of prior Orders in the case, but merely updates  
21 the extension of the Injunction through March 3rd.

22 MR. HUEBNER: Thank you very much, Your Honor, and  
23 obviously, at the early March hearing we will all know a lot  
24 more about where things are and, as we said in the Motion we  
25 filed last night, we reserve the right to change the relief



1 requested based on circumstances that are developing. We  
2 are constantly interacting with our major stakeholders and  
3 trying to figure out the best way forward and hopefully, you  
4 know, for everyone involved, the mediation will yield its  
5 desperately desired fruit of the materially enhanced yield  
6 that can be used to improve and save many lives and we'll  
7 have to figure out what direction we go on based on its  
8 outcome. Thank you for the ruling, Your Honor.

9 MR. HUEBNER: That brings us to the final matter,  
10 which is, in fact, contested. The only contested matter on  
11 for today, which is the Ad Hoc Committee of  
12 (indiscernible)'s Challenge Letter. (indiscernible) handled  
13 by Mr. McClammy, and so, I don't know who is kicking off  
14 that final matter, but I know it's not me, so I will click  
15 off my camera and microphone and see who (indiscernible).

16 THE COURT: Okay. Very well. Thank you. This  
17 dispute arises in the context of the Third Amended  
18 Protective Order entered by the Court after considerable  
19 negotiation by the parties involved on November 12, 2020.  
20 The Protective Order deals with and facilitates discovery  
21 produced to the parties of interest in these cases and sets  
22 forth both limitations on the use of information provided in  
23 that discovery, which I've noted often has been extremely  
24 extensive discovery, and a mechanism for challenging  
25 designations or redactions with respect to discovery

1 material under the Order if a receiving party believes that  
2 discovery material at issue is not properly designated as  
3 protected information under the Order, which is set forth in  
4 Paragraph 65 of the Protective Order. The context of this  
5 dispute is that it arose, I believe, in late November of  
6 last year with an exchange of correspondence consistent with  
7 Paragraph 65 in December and importantly before District  
8 judgment is ruling on Plan confirmation that was  
9 supplemented by filings this month after I told the parties  
10 to schedule a hearing.

11 It's clear to me that the Debtors and the other  
12 party to this dispute have worked hard together to resolve  
13 disputes over the production and use of information and the  
14 parties may have been doing so since then. Those parties,  
15 in addition to the Debtors being the NAS Children Ad Hoc  
16 Committee or the NAS AHC. So, let me ask you first, have  
17 there been any further developments on this dispute?

18 MR. CREADORE: Your Honor, good morning. This is  
19 Don Creadore of the Creadore Law Firm, P.C. speaking on  
20 behalf of the NAS Group and in response to your question,  
21 there has been no direct communications with me and my  
22 group, but I do understand there had been some efforts in  
23 the background and (indiscernible) to try to strike a  
24 resolution. But unfortunately, I have not, as I want to  
25 repeat, been contacted by the Debtors to try to move the

1 matter forward. And we have always left open the  
2 opportunity to have and engage in that discussion to do so,  
3 if only to avoid this type of proceeding.

4 THE COURT: Okay. All right. Is that your  
5 understanding too, Mr. McClammy on behalf of the Debtors?

6 MR. MCCLAMMY: Yes. Thank you, Your Honor. We've  
7 had continuing discussions, including with Mr. Preis from  
8 Akin Gump to try to see if a resolution could be brokered  
9 and, I think, you know, if it weren't for concerns about the  
10 process, we might be there. If it were limited to just a  
11 certain defined core set of documents without concerns for  
12 opening the door to these requests coming in from lots of  
13 different parties. So, while we remain hopeful that there  
14 could be something that we could discuss to get there, we  
15 just haven't been able to bridge that gap yet.

16 THE COURT: Okay. Well, I think the point you  
17 raised is worth focusing on. I understand that concern,  
18 i.e., this case has an unusually large number of groups  
19 that, under the Protective Order, had access to, again,  
20 literally millions of documents and hundreds of millions --  
21 almost a hundred million pages. And as the letter that I  
22 received from Mr. Preis last night states, the use of that  
23 material, as well as other material, was specifically  
24 addressed in the Chapter 11 Plan with a public document  
25 depository and negotiation of what would be in it, which

1 resolved disputes over in large measure piecemeal requests  
2 for relief from the Protective Order or disputes under the  
3 Protective Order.

4 And I understand the concern about opening up in  
5 some sort of policy way, the door to all sorts of people  
6 asking to be relieved from the Protective Order so that the  
7 Debtors would then be forced to litigated all of those  
8 issues at considerable expense. And before then, dealing  
9 with the process of reviewing, in even greater detail, the  
10 designations under the Protective Order. On the other hand,  
11 I have just this one request in front of me. And if it can  
12 be a very limited request and the Debtors, perhaps with the  
13 input of the Committee, can see their way to seeing,  
14 specifically, a reason to exceed to it with perhaps  
15 limitations on how the information is to be used, I'm not  
16 sure it does open the floodgates. I mean, in my review of  
17 the caselaw, the analysis of a special request is pretty  
18 particularized. I mean, it's pretty request specific and a  
19 lot depends on the Court's sense of whether the requestor  
20 really does have a strong basis for the information, on the  
21 one hand and whether the party resisting the request, on the  
22 other, has over-designated and the like. So, I wouldn't get  
23 too hung up on the "opening the floodgates" point. I think  
24 it's really a specific analysis of each case.

25

1           And I'll say one other thing in researching this  
2           issue, the overall standard for purposes of Rule 26C in the  
3           Second Circuit has not been set by the Circuit. The Circuit  
4           has ruled clearly on certain issues, such as, I believe it  
5           is now clear that, in the Second Circuit there is no  
6           presumption in favor of public access to this type of  
7           material.

8           But what it has not ruled on is the extent of the  
9           burden to show cause under Rule 26 and the Courts, as they  
10          themselves have acknowledged at the District Court level,  
11          have taken different approaches to that burden to show  
12          cause.

13          I must say, I find quite persuasive a recent  
14          opinion by Judge Underhill, Haidon v. Town of Bloomfield,  
15          2021 U.S. Dist. LEXIS 137498 (D. Conn. Jul. 23, 2021), which  
16          I think is a very scholarly and logical analysis of what  
17          good cause means under Rule 26(c).

18          But he notes that there is a split in the Circuit  
19          as to what that showing needs to be and I think cites as a  
20          leading case for the contrary view, In Re: Parmalat  
21          Securities Litigation 258 FRD 236 (2009). Although the  
22          nature of the order in that case, even if you would agree  
23          with the opinion, which Judge Underhill doesn't, is quite  
24          different than the order here, in that even if something was  
25          not designated as confidential, it would still be precluded

1 from being used in other litigation.

2 So, I am reluctant, I guess, with today's level of  
3 briefing and the fact that this is not an evidentiary  
4 hearing, to actual rule on this issue, particularly since I  
5 think I made it clear to you that I don't believe you would  
6 necessarily open any floodgates if you agreed on some  
7 targeted release of this information for a specific use,  
8 which to me, hasn't yet been identified. I mean, I have a  
9 lot of questions on both sides as to the use that this  
10 information would be put to if it were released, as well as  
11 the Debtors' reasons, other than the floodgate reason for  
12 not disclosing it.

13 But, I mean, I have cited to me, for example,  
14 cases that rely on the Agent Orange case, which has been  
15 overruled by the Circuit on the presumption. I just don't  
16 think the briefing is sufficient for an issue of this  
17 magnitude and with this potential level of floodgates. If  
18 we're going to force the floodgates issue, in other words,  
19 and get a ruling from me, I want to make sure I have a full  
20 record and full briefing on it because they're important  
21 points and they should (indiscernible).

22 MAN: Your Honor, may I address the Court?

23 THE COURT: Well, let me just -- let me just say  
24 one more thing. One issue that has not been briefed that is  
25 also, I think, one that goes to what the nature of cause is

1 here, and again, I want to view that dispute among the  
2 District Courts hasn't been fully briefed either. But the  
3 other issue is this, there is a Protective Order here,  
4 parties have relied on it.

5 There was extensive discovery here without what  
6 would otherwise have been, I believe, protracted a difficult  
7 fight, so would discovery and delay because of it. And the  
8 Order itself provides, in Paragraph 65, just that, "A  
9 receiving party may challenge a designation with respect to  
10 discovery material that is or would be discoverable. If a  
11 receiving party believes that discovery material is not  
12 properly designated as protective information, such  
13 receiving party will identify --", etc. etc. etc.

14 So, my question is, are we fighting here about  
15 whether, in fact, it fits within the definition of  
16 "confidential information" in Paragraph 8, which is broad  
17 and includes, besides the personal information in I and II,  
18 which, I'm sure the two parties would agree would not be  
19 produced. Also, in VI, "Research, technical, commercial,  
20 financial, banking or investment information the protecting  
21 party has maintained as confidential."

22 So, if the issue is, under this Order, all you  
23 could do, if you're objecting under 65 is contest whether  
24 something is research, technical, commercial, financial,  
25 banking or investment information the protecting party has

1 maintained as confidential, that's a pretty easy evidentiary  
2 determination. Was it protected as confidential or not?  
3 Was it kept confidential?

4 On the other hand, if, as I think, the NAS  
5 Committee is saying, the issue is whether, not only that,  
6 but also whether it should be maintained as confidential,  
7 that's a very different determination. And no-one's really  
8 briefed that issue in the context of the caselaw. I do have  
9 cases that interpret various orders and sometimes courts  
10 take comfort that they're not curtailing discovery because  
11 the order still has protections within it that would apply.

12 There are other times when courts open it up, but  
13 you know, the Supreme Court in the Seattle case said,  
14 there's no public right, including under the First  
15 Amendment, to override 26C. The Second Circuit in the  
16 Street.com case and the McAllister case, that is cited and  
17 construed, took the same view, more specifically.

18 So, I think I need more briefing, but I also think  
19 that given what I've seen of the documents which were  
20 produced in camera, as per the Paragraph 65, this isn't  
21 necessarily a floodgates issue if you just say 1-2-3 of  
22 these can be produced in the following way for the NAS  
23 Committee to use.

24 So, I would like to adjourn this so you can have  
25 that discussion and provide the further briefing on those



1 two issues, the proper extent or definition of cause under  
2 26C, particularly where, this is the second issue, there's  
3 an extent Protective Order that's been in place for two  
4 years that is worded like this one. So, I'm throwing that  
5 out.

6 I know you all have probably prepared oral  
7 argument for me today, but that's just where I am at this  
8 point.

9 MR. MCCLAMMY: Understood, Your Honor. Jim  
10 McClammy with David Polk on behalf of the Debtors. I think  
11 that that makes sense. I think it may make sense for us to  
12 find the time to convene again with the folks from the NAS  
13 Committee, the UCC and Mr. Murray on behalf of the schools,  
14 see if we can reach some agreement, as Your Honor, suggests,  
15 on targeted relief for a specific use and then if, not we  
16 can submit additional briefing to Your Honor for an ultimate  
17 resolution.

18 THE COURT: Okay. All right.

19 MR. CREADON: Your Honor, this is Don Creadon on  
20 behalf of the NAS Group, and we will follow the Court's  
21 directions. When we get off this call today, we will be  
22 making a call over to the Debtors to try to arrange to move  
23 the matter forward and to have an open, frank and hopefully  
24 constructive discussion and perhaps come to some type of  
25 resolution and not have to appeal before you, Judge, again

1 in this matter on this particular --

2 THE COURT: That's the type of discussion I want.  
3 So, I'll adjourn this, whether it's to the next one or the  
4 one after that I think depends on what you all discuss as  
5 far as the briefing schedule.

6 MR. HUEBNER: Thank you, Your Honor.

7 MR. CREADON: Thank you, Your Honor.

8 THE COURT: Okay. Thank you. All right, so that, I  
9 believe, concludes this morning's hearing.

10

11 (Whereupon these proceedings were concluded at  
12 10:57 a.m.)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: February 18, 2022